

Exhibit D

MICHAEL G. O'NEILL

ATTORNEY AT LAW

Via ECF

October 1, 2010

Hon. Denis R. Hurley
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: Paladino v. DHL Express
07 CV 1579 (DRH)(ARL)

Dear Judge Hurley:

I represent the plaintiff,¹ and I am writing in response to yesterday's letter to the Court from Scott Gilly, counsel for defendant DHL in which he discusses DHL's intended motion for a bond for costs pursuant to FRAP 7.

Plaintiff's position is that (a) his appeal has merit and is taken in good faith, (b) he has a right to take his appeal, (c) requiring the posting of a bond would likely result in an insurmountable barrier to plaintiff's ability to proceed with his appeal and (d) plaintiff has shown no bad faith or vexatious conduct in this litigation. I believe that the circumstances will also show that DHL's pursuit of this unusual remedy has nothing to do with recouping its appellate costs and everything to do with creating an obstacle to the appeal itself.

The Court earlier concluded that plaintiff's appeal lacked merit. In fairness to plaintiff, however, his motion for leave to proceed in forma pauperis did not discuss the merits of his appeal, and I look forward to persuading the Court that plaintiff's appeal does present substantial and meritorious grounds for review.

Mr. Gilly makes reference to plaintiff's alleged non-compliance with Circuit Court orders. That is simply not true. After this Court denied plaintiff's application to proceed in forma pauperis, the Circuit Court ordered plaintiff to pay the filing fee, or make his motion in the Circuit Court, by August 30, 2010. Plaintiff paid the filing fee on August 30, 2010. Because the fee is paid in the District Court, however, that fact is not immediately communicated to the Circuit Court, and the Circuit Court automatically

¹ The Court's impression that plaintiff is proceeding on appeal pro se is mistaken.

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dismissed the appeal. Plaintiff's appeal was reinstated by the Circuit Court precisely because he had complied with the Circuit Court's order. Mr. Gilly's characterization of this as "one final opportunity to properly pursue his appeal" is nothing more than Mr. Gilly taking an advocate's license with the facts.

I do not believe that a pre-motion conference will assist either the Court or the parties, and therefore plaintiff has no objection to the Court waiving the pre-motion conference and instructing the parties to submit a proposed briefing schedule to the Court no later than the end of next week.

Respectfully yours,



cc: All parties (by ECF)